



Atty. Docket No. 81044557 (201-0705)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Art Unit : 3661
Examiner : Olga Hernandez
Applicant : Jan Ryderstam et al.
Appln. No. : 10/694,167
Filing Date : October 27, 2003
Confirmation No. : 3060
For : TRACTIVE FORCE MAP

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

PRE-APPEAL BRIEF REQUEST FOR REVIEW

In response to the Office Action mailed June 30, 2005, Applicants respond as follows.

The request for review begins on page 2 of this paper.

Applicant : Jan Ryderstam et al.
Appln. No. : 10/694,167
Page : 2

REMARKS

Claims 1-20 are pending in the present application. Claims 6, 7, 9-12 and 16-20 have been indicated as being in condition for allowance. Reconsideration of the rejection of claims 1-5, 8 and 13-15 is respectfully requested for the following reasons.

Claims 1-5, 8 and 13-15 have been rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,528,959 to Kitano et al. "Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, *arranged as in the claim.*" *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir. 1984) (emphasis added). In proceedings before the Patent and Trademark Office, the Examiner bears the burden of establishing a prima facie case of anticipation based upon the prior art. *In re Sun*, 31 U.S.P.Q.2d 1451, 1453 (Fed. Cir. 1993) (unpublished). Applicant respectfully asserts that the Examiner has not yet met his burden of establishing a prima facie case of anticipation with respect to the rejected claims as the rejection of record clearly does not show all of the elements of the rejected claims.

Claim 1 defines a method for controlling tractive force of a vehicle including, among other things, determining a tractive force request of a driver of the vehicle, determining an actual tractive force of the vehicle and modifying the actual tractive force of the vehicle to be equal to the tractive force request.

The prior art of record does not disclose or suggest the above noted features of claim 1. According to the Office Action:

Kitano discloses determining a tractive force request of a driver of the vehicle; determining an actual tractive force of the vehicle; and modifying the actual tractive force of the vehicle to be equal to the tractive force request (column 3, lines 35-48, column 7, lines 18-24, 57-67 and figures 2, 3, 29).

However, the portions of the Kitano et al. '959 patent pointed out in the Office Action did not disclose the claimed features and Applicants submit that that Kitano et al. '959 patent does not disclose the current features anywhere in the patent.

The Office Action first cites lines 35-48 of column 3 of the Kitano et al. '959 patent for including the features of claim 1. However, this cited section does not include determining an actual tractive force of the vehicle or modifying an actual tractive force of the vehicle to be

Applicant : Jan Ryderstam et al.
Appln. No. : 10/694,167
Page : 3

equal to a tractive force request. Applicant notes that the traveling condition-determining means for determining a present traveling condition of the vehicle in this cited section refers to whether the vehicle is in a forward drive mode, a reverse drive mode, a forward decelerating regeneration mode, a reverse decelerating regeneration mode or a stoppage mode, as outlined in lines 1-21 of column 13 of the Kitano et al. '959 patent. Therefore, this cited section does not disclose determining an actual tractive force of a vehicle or modifying an actual tractive force of a vehicle to be equal to a tractive force request.

The Office Action also cites lines 18-24 of column 7 of the Kitano et al. '959 patent. However, this cited paragraph refers to setting the braking force of an electric motor 4 controlling rear wheels WRR and WRL of a vehicle 2 when the vehicle 2 has an engine braking force of the engine 3. Accordingly, this section does not refer to determining a tractive force request of a driver of a vehicle, determining an actual tractive force of the vehicle and modifying the actual tractive force of the vehicle to be equal to the tractive force request.

The Office Action has also cited lines 57-67 of column 7 of the Kitano et al. '959 patent. According to the Kitano et al. '959 patent:

It is a third object of the invention to provide a driving force control system for a front-and-rear wheel drive vehicle that enables the assistance of an electric motor to be smoothly performed without developing a torque step when the vehicle is accelerated, thereby ensuring an excellent acceleration and drivability.

Lines 20-25 of column 3. According to the Kitano '959 patent, lines 56-67 of column 7 are used to obtain the objective of assisting an electric motor as a drive source for left and right rear wheels. However, lines 57-67 of column 7 do not refer to determining an actual tractive force of a vehicle or modifying the actual tractive force of the vehicle to be equal to the tractive force request of a driver of the vehicle. This quoted section is only drawn to driving the electric motor 4.

Finally, Figs. 2, 3 and 29 of the Kitano et al. '959 patent are drawn to a flow chart of a main flow of a driving force control process, a flow chart of a subroutine for a driving force-calculating process, and a flow chart of a target rear-wheel driving force-calculating subroutine, which is executed by a driving force control system according to a third

Applicant : Jan Ryderstam et al.
Appln. No. : 10/694,167
Page : 4

embodiment of the invention, respectively. Therefore, Figs. 2 and 3 are for the first embodiment of the invention and Fig. 29 is the third embodiment of the invention. Nevertheless, none of these figures and related description disclose modifying an actual tractive force of a vehicle to be equal to a tractive force request of a driver of a vehicle.

Accordingly, nowhere in the sections cited by the Office Action or in the Kitano et al. '959 patent is disclosed modifying a tractive force of a vehicle to be equal to a tractive force request of a driver of a vehicle. The Kitano et al. '959 patent does not disclose modifying "the 'real' tractive force" to be equal to a "'target' driving force" as set forth in the Office Action. Accordingly, claim 1 is in condition for allowance. Furthermore, claims 2-5 and 8 depend from claim 1, and since claim 1 defines unobvious patentable subject matter, claims 2-5 and 8 define patentable subject matter.

Claim 13 defines a method for controlling tractive force of a vehicle including, among other things, a method of controlling tractive force of a vehicle comprising measuring an actual speed of the vehicle, sensing a position of an acceleration pedal, looking up the tractive force request on a map corresponding to the actual speed and the position of the acceleration pedal, modeling the actual tractive force of the vehicle and modifying the actual tractive force of the vehicle to be equal to the tractive force request.

The prior art of record does not disclose or suggest the above noted features of claim 13. Specifically, as discussed above regarding claim 1, the Kitano et al. '959 patent does not disclose modifying an actual tractive force of a vehicle to be equal to a tractive force request. The Kitano et al. '959 patent does not disclose modifying "the 'real' tractive force" to be equal to a "'target' driving force" as set forth in the Office Action. Accordingly, claim 13 is in condition for allowance. Furthermore, claims 14 and 15 depend from claim 13, and since claim 13 defines unobvious patentable subject matter, claims 14 and 15 define patentable subject matter.

Applicant : Jan Ryderstam et al.
Appln. No. : 10/694,167
Page : 5

All pending claims 1-20 are believed to define patentable subject matter, and a Notice of Allowability is therefore earnestly solicited.

Respectfully submitted,

9/14/05
Date

Marcus P. Dolce
Marcus P. Dolce, Registration No. 46 073
Price, Heneveld, Cooper, DeWitt & Litton, LLP
695 Kenmoor, S.E.
Post Office Box 2567
Grand Rapids, Michigan 49501
(616) 949-9610

MPD/msj